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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 TERI JEAN LACHAPELLE-BANKS,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting
10 Commissioner of Social Security,

11 Defendant.

Case No. 2:16-cv-01956-RBL

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

12 THIS MATTER is before the Court on Plaintiff LaChapelle-Banks' Complaint [Dkt. 3]
13 for review of the Social Security Commissioner's denial of her application for disability
14 insurance benefits.

15 LaChapelle-Banks suffers from lumbar sprain/strain, status post laminectomy, and colitis
16 or Crohn's disease. *See* Dkt. 7, Administrative Record 11. She applied for disability insurance
17 benefits in September 2013, alleging she became disabled beginning in July 2013. *See* AR 9.
18 That application was denied upon initial administrative review and on reconsideration. *See id.* A
19 hearing was held before Administrative Law Judge Timothy Mangrum in January 2015. *See id.*
20 LaChapelle-Banks, represented by counsel, appeared and testified, as did a vocational expert. *See*
21 AR 28-69.

22 The ALJ determined LaChapelle-Banks not to be disabled. *See* AR 6-27. The Appeals
23 Council denied LaChapelle-Banks' request for review, making the ALJ's decision the final
24 decision of the Commissioner of Social Security. *See* AR 1-4; 20 C.F.R. § 404.981. In January

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1 2017, LaChapelle-Banks filed a complaint seeking judicial review of the Commissioner’s
2 decision. *See* Dkt. 3.

3 LaChapelle-Banks argues the Commissioner’s decision to deny benefits should be
4 reversed and remanded for an immediate award of benefits, or for further administrative
5 proceedings, because the ALJ erred in evaluating the medical evidence in the record and in
6 finding at step five of the sequential evaluation process that LaChapelle-Banks could perform
7 work available in the national economy.
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9 The Commissioner argues the ALJ did not err in evaluating the medical evidence, so the
10 ALJ’s finding that LaChapelle-Banks was not disabled was supported by substantial evidence
11 and should be affirmed.
12

I. DISCUSSION

13 The Commissioner’s determination that a claimant is not disabled must be upheld by the
14 Court if the Commissioner applied the “proper legal standards” and if “substantial evidence in
15 the record as a whole supports” that determination. *See Hoffman v. Heckler*, 785 F.2d 1423, 1425
16 (9th Cir. 1986); *see also Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir.
17 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991) (“A decision supported by
18 substantial evidence will, nevertheless, be set aside if the proper legal standards were not applied
19 in weighing the evidence and making the decision.”) (citing *Brawner v. Sec’y of Health and*
20 *Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).
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22 Substantial evidence is “such relevant evidence as a reasonable mind might accept as
23 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation
24 omitted); *see also Batson*, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if
25 supported by inferences reasonably drawn from the record.”). “The substantial evidence test
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1 requires that the reviewing court determine” whether the Commissioner’s decision is “supported
2 by more than a scintilla of evidence, although less than a preponderance of the evidence is
3 required.” *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence
4 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.
5 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence
6 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting
7 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).¹

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9 **A. The Medical Evidence in the Record.**

10 The ALJ determines credibility and resolves ambiguities and conflicts in the medical
11 evidence. See *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where the medical evidence
12 in the record is not conclusive, “questions of credibility and resolution of conflicts” are solely the
13 functions of the ALJ. *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such cases, “the
14 ALJ’s conclusion must be upheld.” *Morgan v. Comm’r, Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th
15 Cir. 1999). Determining whether inconsistencies in the medical evidence “are material (or are in
16 fact inconsistencies at all) and whether certain factors are relevant to discount” the opinions of
17 medical experts “falls within this responsibility.” *Id.* at 603.

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19 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings
20 “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this
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23 ¹ As the Ninth Circuit has further explained:

24 . . . It is immaterial that the evidence in a case would permit a different conclusion than that
25 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by
26 substantial evidence, the courts are required to accept them. It is the function of the
[Commissioner], and not the courts to resolve conflicts in the evidence. While the court may
not try the case de novo, neither may it abdicate its traditional function of review. It must
scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are
rational. If they are . . . they must be upheld.

Sorenson, 514 F.2d at 1119 n.10.

1 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
2 stating his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences
3 “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court may draw
4 “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881 F.2d
5 747, 755 (9th Cir. 1989).

6 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
7 opinion of a treating physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Even when a
8 treating physician’s opinion is contradicted, that opinion “can only be rejected for specific and
9 legitimate reasons that are supported by substantial evidence in the record.” *Id.* at 830-31. In
10 general, more weight is given to a treating physician’s opinion than to the opinions of those who
11 do not treat the claimant. *See id.* at 830.

12 LaChapelle-Banks argues the ALJ erred by failing to give a specific and legitimate
13 reason supported by substantial evidence to discount the opinion of treating physician Friedrich
14 Loura, M.D. *See Dkt. 9 at 5-11.* The Court agrees.

15 Loura began treating LaChapelle-Banks for abdominal pain in November 2012 and
16 diagnosed her with Crohn’s disease of the small bowel with possible enterovesical fistula healing
17 in March 2013. *See AR 693, 698-99.* Loura identified LaChapelle-Banks’ symptoms as nausea,
18 abdominal pain and cramping, malaise, fatigue, frequent vomiting, abdominal distention, and
19 fistulas resulting in feces in urine. *See AR 693.* In January 2015, Loura completed a residual
20 functional capacity questionnaire. *See AR 693-95.* In the questionnaire, Loura opined that,
21 because of LaChapelle-Banks’ impairments, she would be capable of only low-stress jobs, would
22 need to shift positions from sitting to standing at will, and would need ready access to a
23 restroom, and would sometimes need unscheduled restroom breaks. *See AR 694.* Loura stated
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1 LaChapelle-Banks' symptoms would frequently interfere with the attention and concentration
2 needed to perform even simple work tasks. *See id.* Loura stated that the episodic aspects of
3 LaChapelle-Banks' impairments were random in nature, severity, duration, and frequency. *See*
4 AR 693. Ultimately, Loura opined LaChapelle-Banks would be likely to be absent from work
5 because of her impairments or treatment about four days a month. *See* AR 695. The ALJ gave
6 Loura's opinion little weight for several reasons, none of which is specific, legitimate, and
7 supported by substantial evidence. *See* AR 18-19.
8

9 First, the ALJ found Loura's opinion was vague, noting Loura did not specify how
10 frequently or for how long LaChapelle-Banks would need to take unscheduled restroom breaks.
11 *See* AR 18. Loura stated LaChapelle-Banks would "sometimes" need to take unscheduled
12 restroom breaks, but he declined to state how often or for how long, presumably due to the
13 "random" nature of her symptoms. *See* AR 693-94. Loura's inability to predict with any certainty
14 the frequency or duration of the breaks is not alone a legitimate reason for the ALJ to discount
15 the necessity of the breaks entirely and to assess LaChapelle-Banks with an RFC containing no
16 allowances for unscheduled restroom breaks. *See* AR 13; *see also Vincent on Behalf of Vincent v.*
17 *Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (stating that the ALJ must explain why
18 "significant probative evidence has been rejected"). Furthermore, the rest of the limitations to
19 which Loura opined, including needing to shift positions and being absent about four days a
20 month, were not vague. *See* AR 693-95.
21

22 Next, the ALJ stated Loura's opinion was "inconsistent with the totality of the evidence."
23 *See* AR 18. This reason is not sufficiently specific, particularly because the ALJ cited no
24 examples. *See id.* It is insufficient for an ALJ to reject the opinion of a treating physician by
25 merely stating, without more, that there is a lack of objective medical evidence in the record to
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1 support that opinion. *See Embrey v. Bowen*, 849 F.2d 418, 421 (9th Cir. 1988). “[A]n ALJ errs
2 when he rejects a medical opinion or assigns it little weight while doing nothing more than
3 ignoring it, asserting without explanation that another medical opinion is more persuasive, or
4 criticizing it with boilerplate language that fails to offer a substantive basis for his conclusion.”
5 *Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir. 2014) (citing *Nguyen v. Chater*, 100 F.3d
6 1462, 1464 (9th Cir. 1996)).
7

8 The ALJ also discounted Loura’s opinion because LaChapelle-Banks’ Crohn’s disease
9 symptoms allegedly improved with medication and without need for surgery. *See AR 18.*
10 However, the records cited by the ALJ to support this alleged improvement are from
11 LaChapelle-Banks’ hospitalizations in 2014 due to Crohn’s flare-ups. *See AR 18, 657, 659-79.*
12 The records indicate LaChapelle-Banks came to the emergency room complaining of nausea,
13 vomiting, and abdominal pain, which a physician attributed to her Crohn’s disease and fistula.
14 *See AR 659.* While that physician noted LaChapelle-Banks’ symptoms “improved with
15 antiemetics,” the physician still admitted her to the hospital because she continued to experience
16 nausea and would benefit from a nasogastric tube. *See id.* LaChapelle-Banks was later
17 discharged but returned to the hospital two weeks later with recurring symptoms. *See AR 660.* A
18 physician noted surgical repair of the fistula might be necessary. *See AR 669.* LaChapelle-Banks
19 was restarted on steroids, which improved her symptoms until she returned to the hospital two
20 weeks later, in the middle of her steroid regimen, complaining of recurring symptoms. *See AR*
21 *675.* These records, rather than showing any improvement that would discredit Loura’s opinion,
22 in fact support Loura’s opinion that LaChapelle-Banks’ impairments and treatment would cause
23 significant absenteeism.
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1 Next, the ALJ noted Loura believed LaChapelle-Banks had a good prognosis. *See AR 18.*
2 However, whatever Loura meant by a “good” prognosis, which was unquantified, does not
3 change his specific opinion regarding the functional limitations resulting from LaChapelle-
4 Banks’ impairments, which Loura found had lasted or were expected to last at least 12 months.
5 *See AR 693-94.*

6 Finally, the ALJ noted LaChapelle-Banks testified she was “able to assist her neighbor
7 with activities of daily living at least several days a week.” *See AR 18-19.* An ALJ may reject a
8 physician’s opinion in part because other evidence of the claimant’s ability to function
9 contradicts that opinion. *See Morgan*, 169 F.3d at 601-02. However, LaChapelle-Banks’
10 testimony, viewed in full context, does not contradict Loura’s opinion. LaChapelle-Banks
11 testified that she cared for her neighbor about 13 hours a week. *See AR 33.* She noted she did not
12 have to do any heavy physical transfers. *See AR 37.* She testified that her husband accompanied
13 her 90% of the time and that he would carry the laundry basket and the groceries because she
14 was unable. *See AR 37-38.* LaChapelle-Banks testified that her schedule was very flexible and
15 that if she was having a “particularly rough day,” she did not have to go. *See AR 38.* This
16 testimony does not contradict Loura’s opinion regarding LaChapelle-Banks’ functional
17 limitations and absenteeism. Therefore, the ALJ erred by failing to provide a specific and
18 legitimate reason supported by substantial evidence for discounting Loura’s opinion.

19 “[H]armless error principles apply in the Social Security context.” *Molina v. Astrue*, 674
20 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is not prejudicial to the
21 claimant or “inconsequential” to the ALJ’s “ultimate nondisability determination.” *Stout v.*
22 *Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *see Molina*, 674 F.3d at 1115.
23 The determination on whether an error is harmless requires a “case-specific application of

1 judgment” by the reviewing court, based on an examination of the record made ““without regard
2 to errors’ that do not affect the parties’ ‘substantial rights.’” *Molina*, 674 F.3d at 1118-19
3 (quoting *Shinseki v. Sanders*, 556 U.S. 396, 407 (2009)). Had the ALJ fully credited Loura’s
4 opinion, the RFC would have included additional limitations, as would the hypothetical
5 questions posed to the vocational expert. For example, Loura stated LaChapelle-Banks would
6 miss about four days of work a month, but the vocational expert testified that employers would
7 only tolerate half a day of absenteeism a month. *See AR 66, 695.* Therefore, the ALJ’s error
8 affected the ultimate disability determination and is not harmless.
9

10 **B. Scope of Remand.**

11 The Court may remand a case “either for additional evidence and findings or to award
12 benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). When the Court reverses an
13 ALJ’s decision, “the proper course, except in rare circumstances, is to remand to the agency for
14 additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004)
15 (citations omitted). It is “the unusual case in which it is clear from the record that the claimant is
16 unable to perform gainful employment in the national economy,” that “remand for an immediate
17 award of benefits is appropriate.” *Id.*

18 Benefits may be awarded where “the record has been fully developed” and “further
19 administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at 1292; *Holohan v.*
20 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

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22 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
23 claimant’s] evidence, (2) there are no outstanding issues that must be resolved
24 before a determination of disability can be made, and (3) it is clear from the
25 record that the ALJ would be required to find the claimant disabled were such
evidence credited.

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Smolen, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

Here, while the ALJ erred in evaluating Loura's opinion, issues remain regarding conflicts in the medical opinions over LaChapelle-Banks' functional capabilities. Remand for further consideration is warranted.

CONCLUSION

The Court finds the ALJ improperly concluded LaChapelle-Banks was not disabled. The Commissioner's decision to deny benefits is REVERSED, and this matter is REMANDED for further administrative proceedings as detailed in this order.

DATED this 7th day of August, 2017.

Ronald B. Leighton
Ronald B. Leighton
United States District Judge

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